

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK09-42505-TJM
)	
MARK JENSEN and)	CH. 12
RANDI JENSEN,)	
)	
Debtor(s).)	

ORDER

Hearing was held in Lincoln, Nebraska, on September 1, 2010, regarding Filing #169, Motion for Turnover of Cattle, filed by Darlene J. Mach; Filing #180, Resistance to Motion for Turnover of Cattle, filed by the debtors; Filing #171, Motion for Allowance of Administrative Claim, filed by Darlene J. Mach; and Filing #181, Resistance to Motion for Allowance of Administrative Claim, filed by the debtors. Trev Peterson appeared for the debtors and Barry Geweke appeared for Darlene J. Mach.

The debtors filed this Chapter 12 case on August 28, 2009. On September 17, 2009, creditor Darlene J. Mach filed a motion to compel immediate assumption or rejection of an executory contract which consisted of a lease of 85 cows. The debtors were to pay Ms. Mach the price of \$125 for each calf born to the cows. The lease payment was due December 1, 2009.

On October 21, 2009, at Filing #37, an order was entered directing the debtors to move to assume the cow lease by November 30, 2009, or have it deemed rejected, with a requirement that upon rejection, the debtors return the cows to the owner immediately. The debtors did not move to assume the lease by November 30, 2009.

The debtors filed a second amended Chapter 12 plan in which they proposed to assume the lease of the Mach cows. On July 23, 2010, at Filing #168, Ms. Mach filed a pleading indicating that she did not consent to such assumption.

At Filing #169, on July 23, 2010, Ms. Mach filed a motion for turnover of the cattle. Without her consent, Mark Jensen had traded eleven of her cows for seven cow-calf pairs. She requested the return of her own cows and of the seven pairs.

Additionally, at Filing #171, Ms. Mach filed a motion for allowance of administrative claim equal to \$125 per head of the debtors' 2010 calf crop out of cows belonging to Darlene Mach. She requested the allowance of administrative expense in an amount equal to \$8,125 representing 65 calves born of the remaining cows owned by Ms. Mach which are being held by the Jensens.

IT IS ORDERED that the motion for turnover of cattle, Filing #169, and the motion for allowance of administrative claim, Filing #171, are granted. Ms. Mach is granted relief from the automatic stay to exercise any and all state law remedies to obtain possession of the cows and is granted administrative expense in the amount of \$125 per calf on the total 2010 calf crop of 65 calves. If there is a dispute between Ms. Mach and Farmers State Bank over the rights of each to the seven cow-calf pairs resulting from the trade of her cows, that matter may be resolved in

another forum.

DATED: September 3, 2010

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:
Trev Peterson
*Barry Geweke
James A. Overcash
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.